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Subject: Historic Use of Village Beaches
Date: 02/24/2009 04:26 PM
Attachments: [reg neg meeting March.doc](#)

During the Jan. 7 meeting, Walker, Koyota, and Patrick asked for documentation as the historic policies with respect to Village Beaches. Furthermore, Mr. Murray indicated that the historic use policies were not clear.

I addressed this topic in March, 2008 and provided a hard copy to the committee. As the attached comment demonstrates, Mr. Murray confirmed that as per

1. press releases I summarized,
2. the 1978 draft interim ORV management plan,
3. Superintendent's Order # 7,
4. Mr. Murray's visits to the respective locations, and
5. Mr. Murray's conversations with a number of park staff who had been involved with closure decisions and implementation of those decisions,

Village Closures due to "narrow beach" began in 1978. Furthermore, subsequent to 1978 the only off season closures of Village Beaches have been due to "narrow beach" considerations. This is **not my assessment or conclusion but the conclusion reached by Mr. Murray after the above noted extensive research on the issue.**

Quite simply, while the criteria used to determine what constituted a "narrow beach" is unclear, the rationale for the closures is crystal clear. I hope this clarifies the issue.

As a side note, Mr. Murray you keep saying our comments are appreciated and considered. I have to admit that based upon the fact that we have discussed this issue at some length I am a little dismayed that you stated that you were not aware of the date when the closures started and that the reasons for such closures were unclear. Similarly, I am greatly dismayed by the fact that I have yet to hear any justification for excluding Pea Island when calculating the proportion of the park devoted to various types of use. As I demonstrated in my Jan. 2009 comment, the failure to include all park resources distorts the allocation of the assets. In this regard, I suggest that your office improve the method used to catalog comments for future reference so that the vast amount of information collected during reg. neg. can be effectively utilized during NPS development of a final rule.

INFORMATION REQUIRED TO ADDRESS SEASONAL CLOSURES--CURRENT POLICY

It is not possible to develop any rules regarding seasonal closures without a thorough understanding of current policy and the impact the current policy has had on visitor satisfaction. This being the case let me take this opportunity to document current policy.

On October 17, 2006 I asked Mr. Murray why the seasonal closures for Frisco and Hatteras Village and north of ramp 43 had not been opened to all use, as per the press release dated 9/13/06 and as the per past practice of the 2004 and 2005 seasons. Mr. Murray stated that these beaches had remained closed to ORVs for many years prior to 2004 and that the policy regarding these areas was unclear. In an attempt to clarify current policy, I performed a thorough review of park actions as they related to beach closures for the period of 1978 to present (see Appendix A). After reviewing my interpretation of park policy and gathering information from other sources not available to me (including park staff involved in closure decisions for Frisco and Hatteras Village and north of ramp 43) Mr. Murray concluded that the policy regarding these beaches is the same as other village beaches—that is, closed seasonally but open from 9/15 to 5/15 unless beach width makes travel unsafe. (see Appendix B).

In 2006, despite the fact that the above referenced beaches were at least as wide as when they were when opened in 2004 and 2005, Mr. Murray decided to defer any decisions regarding changes to the “narrow beach” closures for the above referenced beaches until such time as this committee could meet to discuss the status of the above referenced beaches.

ISSUES RELATED TO FUTURE POLICY & NEW INFORMATION AVAILABLE

Insofar as the date for the implementation of 2008 seasonal closures is right around the corner, I do not see any benefit in making any changes for this season. That said, since

1. the local economy cannot survive on summer revenues alone,
2. the number of ORVs present on the park’s beaches is extremely low (the only congregations found would be in the area of the point or where striper and trout are coming to the beach),
3. the number of passive users present on the park’s beaches approaches zero in the winter months (see Appendix C), and
4. vehicular access is not only the preferred method of accessing the park’s beaches during the harsh winter weather but sometimes to only way for visitors with limited stamina to engage in winter recreational activities (fishing, shelling, etc.),

I strongly recommend that the committee suggest that the park enforce the current seasonal policy (as described above). Furthermore, I suggest that if the final rule proposed by this committee includes any changes to the current seasonal closure policies, recommended changes be limited to tweaking the closure dates to reflect current usage patterns. Quite simply, based upon the pictures in Appendix C and the vehicle count data the NPS is collecting, there is **NO EVIDENCE** that opening seasonally closed beaches presents any safety concern whatsoever.

APENDIX A—SEASONAL CLOSURE POLICY

According to official releases, there have **NEVER** been any winter closures of **ANY** beach for **ANY** reason other than either resource protection or safety concerns.

Furthermore, “official” press releases state:

1. that the re-opening of summer seasonal closures is based upon the 1978 Interim ORV Plan, and
2. that the 1978 Plan **WILL** be followed until such time as a new policy is developed as part of the upcoming rulemaking process.

The above statements are based upon a thorough review of all actions taken by CAHA for the period of 1978 to present. A table detailing the results of my research is presented below. In summary, the table documents the following facts:

1. The annual press release announcing the re-opening of summer seasonal closures always specifies the dates on which **ALL** summer seasonal closures are to open and close.
2. The only delays in the re-opening of summer seasonal closures have been the result of significant beach erosion caused by storm events or turtle closures.
3. All subsequent closures have been based upon resource closures (birds or turtles) or safety closures.
4. In the event that a closure is made based upon a safety closure, the related press release always states that the area **WILL** be reopened when the beach widens enough to allow for safe ORV navigation.

Based upon the above, I respectfully request that you follow the long-standing policy of re-opening **ALL** summer seasonally closed beaches as warranted based upon current safety standards. If there has been a change in NPS policy regarding winter closures, please direct me to the relevant document.

Virginia L. Luizer

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	Fall 1978 Through Spring 2003 ¹	Fall 2003/Spring 2004 ³	Fall 2004/Spring 2005		Fall 2005/Spring 2006 ⁴		Fall 2006/Spring 2007	
Location	Action	Action	Action	Date	Action	Date	Action	Date
Rhodante/Salvo/Waves	Generally open	Open for most of season	OPEN-Ramp 23 north 1.3 miles	9/16/2004 PR 9/13/04	OPEN	??? PR 11/10/05	OPEN-Ramp 23 north 3 miles	9/16/06 PR 9/15/06
			OPEN-Ramp 23 north 2.8 miles, NPS deemed safe to navigate	11/5/2004 PR 11/04/04				
Avon Village	Generally open	Open for most of season	OPEN-Ramp 34 south 1.6 miles	9/16/2004 PR 9/13/04	CLOSED-as of 11/10/05-narrow beach	PR 11/10/2005	OPEN-Ramp 34 to ramp 38	9/16/06 PR 9/15/06
			OPEN-Entire stretch from ramp 34 to ramp 38, NPS deemed safe to navigate	10/20/2004 PR 10/19/04	OPEN-Ramp 34 to Avon Pier-sometime during the winter	PERSONAL OBSERVATION	CLOSED-.2 miles south of Avon Pier-narrow beach	9/18/06 PR 9/18/06
			CLOSED-1.3 miles south of ramp 34 to ramp 38-narrow beach	10/29/2004 PR 10/28/04	OPEN-Ramp 38 north as far as I could see-sometime during the winter	PERSONAL OBSERVATION	CLOSED-Ramp 38 north to .2 miles south of Avon Pier-narrow beach	9/18/06 PR 9/18/06
Ramp 38 to Ramp 43	North end opening varied with beach width ²	North end opening varied with beach width	North end opening varied with beach width		North end opening varied with beach width		OPEN-Ramp 38 south 1.5 miles	9/16/06 PR 9/15/06
	South end generally closed due to narrow beach ²	South end opening varied with beach width		10/29/2004 PR 10/28/04	OPEN-Ramp 43 north 1 mile	CLOSED-as of 11/10/05 PR 11/10/2005	OPEN-Ramp 43 north .4 miles	9/16/06 PR 9/15/06
Ramp 49 to Frisco Pier	Generally closed due to narrow beach ²	Open for most of season	OPEN-Ramp 49 south for 1.7 miles	9/16/2004 PR 9/13/04	CLOSED-as of 11/10/05-narrow beach	PR 11/10/2005	OPEN-Ramp 49 south 1.1 miles	9/16/06 PR 9/15/06
			CLOSED-Ramp 49 south reduced to .9 miles-narrow beach	2/18/2005 PR 2/18/05				
Frisco Pier to Hatteras Village	North end generally closed due to narrow beach ²	North end generally closed due to narrow beach	North end generally closed due to narrow beach		CLOSED-North end, as of 11/10/05-narrow beach	PR 11/10/2005	CLOSED-North end-narrow beach	9/16/06 PR 9/15/06
	South end opening varied with beach width ⁵	South end opening varied with beach width	OPEN-Ramp 55 north 1.4 miles	9/16/2004 PR 9/13/04	CLOSED-Ramp 55 north, as of 11/10/05-narrow beach	PR 11/10/2005	CLOSED-Ramp 55 north remains at seasonal line-narrow beach	9/16/06 PR 9/15/06
			CLOSED-Ramp 55 north .2 miles-turtle nest	9/16/2004 PR 9/16/04				
			OPEN-Ramp 55 north 1.4 miles-turtle nest gone	9/26/2004 PR 9/27/04				
			CLOSED-Ramp 55 north-narrow beach	10/23/2004 PR 10/22/04				

¹ As per Section 9, Special Protection of the Public Lands of the Draft Interim ORV Management Plan of 1978:

Annually, on September 10, areas of heavy pedestrian use, closed to ORVs seasonally in summer since 1974 to preserve public safety and minimize use conflicts, are normally totally reopened to off-season ORV use.

Also, for an example of the typical press release, see press release dated 9/19/2002

² As per Section 9, Special Protection of the Public Lands of the Draft Interim ORV Management Plan of 1978:

In September 1978, about 28 miles of National Seashore beach, including portions both inside and outside established seasonal closures, were found at normal high tide to be too narrow for use by ORVs without danger to vehicles or damage to adjacent dunes and private property. This condition arose during a stormy preceding winter followed by a summer deficient in normal beach accretion.

³ Hurricane Isabel devastated the Island on 9/18/03. While I could not find any press releases for the Fall/Winter of 2003/2004, the following obtained from the recap of a meeting held on 5/21/2004 at NPS headquarters (<http://www.obpa.org/cgi-bin/boards/obpaadmin.cgi?read=65>) documents that the seasonal closures were open during this period.

NPS apologized for the early closures in front of the villages of Frisco, Avon, Rodanthe, Waves and Salvo and stated that seasonal closure dates of the 1978 Interim Plan of May 15th to Sept. 15th would be used until the new ORV Plan is adopted.

⁴ Damage from Hurricane Ophelia delayed opening of seasonally closed beaches until 10/11/05, see press release dated 10/7/05.

The above press release did not identify the specific areas that would remain closed due to narrow beach. The only other press release I could find was dated 11/10/05. This press release identified the only area actually reopened as Rhodante/Salvo/Waves. Additional openings are based upon my personal observations

APPENDIX B
Explanation Received From Mike Murray on 12/20/06

Dear Jim and Ginny,

I apologize for the belated response. Thank you again for the historical information you provided on off-season ORV access south of Ramp 49 and north of Ramp 55.

Since receiving your messages, I have reviewed the material you sent as well as the 1978 draft interim ORV management plan and Superintendent's Order # 7, visited the respective locations on several occasions, spoken with a number of park staff who have been involved with closure decisions and implementation of those decisions related to the area between Ramp 49 and Ramp 55 over the years, and spoken with several different stakeholders for their perspective.

There is consensus that the basis for maintaining the closure over the years has been due to a "narrow beach." (emphasis added) It is also clear that prior to 2004 the park did NOT follow any specific beach width parameters, such as those identified in the draft interim 1978 plan, for justifying the need for safety closures "due to a narrow beach" at these locations. The concept of using the specific beach width parameters identified in the 1978 draft interim plan was initiated and formalized by Superintendent Belli in Superintendent's Order # 7 in May 2004. That change in policy, which adopted other aspects of the draft interim 1978 as well, was a point of contention for many stakeholders and has been in dispute ever since.

As you know, we are in the beginning stages of the Negotiated Rulemaking process. **My plan is to maintain the current policy for now and defer further review of this issue to the negotiated rulemaking committee. With this in mind, the existing safety closure south of Ramp 49 to just north of Ramp 55 will remain in effect. Please understand that I am applying the same rationale of deferment to all requests that I have received to either expand or reduce the current off-season winter closures in front of Frisco-Hatteras and/or Buxton.** (emphasis added)

Thank you again for your time and interest in this issue.

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APPENDIX C

Please find below pictures depicting observed usage for the winter/spring 2007. Note, the below pictures are not the result of a random sample but rather were skewed toward fair weather days and mid morning to mid afternoon hours. Furthermore, the pictures presented below are only a small sample of the pictures forwarded to Larry Hardham. In my opinion the only way the committee can make “informed” decisions is by reviewing the full set of pictures in Mr. Hardham’s possession.

